



CHAIRMAN

Federal Communications Commission

Washington, D C.

September 15, 2003

The Honorable Frank A. LoBiondo
U S House of Representatives
225 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman LoBiondo

Thank you for your letter of August 18, 2003, regarding the Commission's recent amendment to its rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"). In your correspondence, you express concern about the Commission's decision requiring written consent before sending advertising faxes.

On September 18, 2002, the Commission released its *Notice of Proposed Rulemaking* ("NPRM") seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. Specifically, the *NPRM* sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

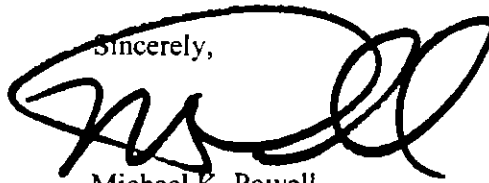
The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's *Report and Order* released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

As we explained in the *Report and Order*, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules initially were scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July *Report and Order*, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the *Report and Order* indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. This extension will allow senders of such advertisements additional time to obtain the necessary permission before the new rules become effective. In addition, it will allow the Commission the opportunity to consider any petitions for reconsideration and other filings that may be made on this issue. I am enclosing a copy of the Commission's *Order on Reconsideration*, released on August 18, 2003.

I appreciate your comments. We have placed a copy of your correspondence in the public record for this proceeding. Please do not hesitate to contact me if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Powell', written over the word 'Sincerely,'.

Michael K. Powell

Enclosure

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Rules and Regulations Implementing the) CG Docket No 02-278
Telephone Consumer Protection Act of 1991)
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)

ORDER ON RECONSIDERATION**Adopted: August 18, 2003****Released: August 18, 2003**

By the Commission

1 On July 3, 2003, the Federal Communications Commission (Commission) released a Report and Order revising many of its telemarketing and facsimile advertising rules pursuant to the Telephone Consumer Protection Act of 1991 (TCPA).¹ Pursuant to Section 1.108 of the Commission's rules,² on our own motion, we issue this limited reconsideration of the *Report and Order* and extend, until January 1, 2005, the effective date of our determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements. We also extend, until January 1, 2005, the effective date of amended rule 47 C.F.R. § 64.1200(a)(3)(i).³

2 In the *Report and Order*, the Commission reversed its prior conclusion that an established business relationship provides companies with the necessary express permission to send faxes to their customers.⁴ The Commission determined that the established business relationship would no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements.⁵ Instead, the Commission

¹ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No 02-278, FCC 03-153, Report and Order (rel. July 3, 2003) (*Report and Order*). A summary of this Report and Order was published in the Federal Register on July 25, 2003 (68 Fed. Reg. 44144).

² 47 C.F.R. § 1.108.

³ Amended rule 47 C.F.R. § 64.1200(a)(3)(i) provides that "a facsimile advertisement is not 'unsolicited' if the recipient has granted the sender prior express invitation or permission to deliver the advertisement, as evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender."

⁴ *Report and Order* at para. 189.

⁵ *Id.*

FRANK A. LOBIONDO
2ND DISTRICT, NEW JERSEY



Congress of the United States
House of Representatives
Washington, DC 20515-3002

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Reply 1

☐ 221 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3002
202-225-6572
FAX 202-225-3318

☐ 5914 MAIN STREET
MAYS LANDING, NJ 08330
609-625-5008
FAX 609-625-5071
1-800-411-4450

August 18, 2003

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Room 8-B201
Washington, D.C. 20554

CGB
Policy-TCPA
PJ
MKP 2518

Dear Chairman Powell:

I am writing in response to the Federal Communications Commission's recent ruling to modify the Telephone Consumer Protection Act of 1991 (TCPA) by doing away with the "established business relationship" provision pertaining to communication via fax, which will go into effect on August, 25, 2003. This ruling places an undue burden on trade associations and businesses, as it relates to the 11-year old statutory interpretation, and will seriously add to their administrative workload.

As a former small business owner and former member of the House Small Business Committee, I am alarmed about the potential adverse effects on businesses and trade associations, such as the Chamber of Commerce of Southern New Jersey in my district. Trade associations and small businesses will be severely affected by the significant increase in the economic burden due to increasing paperwork requirements and potential frivolous lawsuits. As a result of this ruling, these organizations would now not be allowed to fax membership dues renewal notices, meeting announcements, or invitations to attend/sponsor an event, without prior written permission from the member. This change will greatly hamper their ability to provide quality services to their membership.

More specifically, I am concerned about the significant compliance burdens associated with the changes which now will require businesses and trade associations to obtain the express written and signed consent of their customers and members before they can send facsimile advertisements to them. This new requirement reflects a substantial reversal of the Commission's eleven-year-old statutory interpretation (of the TCPA) that

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an established business relationship, not written and signed consent, provided businesses and trade associations with the necessary express permission to send faxes to their customers and members.

Although I am not at all in support of allowing blast junk faxes, I urge you to stay this decision temporarily and reconsider exempting these *legitimate business practices* of trade associations and small businesses from the rule governing unsolicited facsimile advertisements, as recently included in the Report and Order amending the regulations that implement the Telephone Consumer Protection Act of 1991.

Thank you for your consideration and prompt attention. I look forward to your timely response and remain committed to working with you to find a compromise that benefits both individual citizens and small businesses.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank A. LoBiondo". The signature is stylized with a large, looped "F" and "L".

Frank A. LoBiondo
Member of Congress

FAL/js